



THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF APPEALS

Appellant:	David R. MacLean	)	
Serial No:	09/550,049	)	Art Unit: 3767
Filed:	April 14, 2000	)	Examiner: Gray, Phillip A.
For:	SAFETY DEVICE FOR USE WITH A VIAL	)	Attorney Docket: 0100/0091

**PETITION FILED PURSUANT TO 37 C.F.R. 1.181(a)(3)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

Sir:

This Petition requests the Group Director to order the examiner to either allow this case or forward this case to the Board of Appeals for adjudication in light of the following:

1. This case was filed on April 14, 2000 with claims 1-27.
2. Claims 1-12 were elected for prosecution in response to a Restriction Office Action dated August 27, 2002.
3. An Office Action dated November 5, 2002 withdrew claims 7-21 from further consideration. A responsive amendment was filed on January 30, 2003.
4. An amendment was filed on August 5, 2003 in response to an Office Action dated May 6, 2003.
5. An Office Action dated October 22, 2003 finally rejected all the pending claims, i.e., claims 1-6 and 22-27.

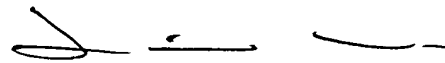
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6. A response was filed on January 12, 2004 responding to the Final Rejection Office Action of October 22, 2003.
7. An Advisory Action dated February 2, 2004 allowed claims 1-6 but maintained the final rejection of claims 22-27.
8. An Appeal Brief was filed on April 20, 2004 appealing the final rejection of claims 22-27.
9. An Office Action dated December 13, 2004 maintained the final rejection of claims 22-27 but reopened the prosecution of the case.
10. A 1<sup>st</sup> Request for Reinstatement of the Appeal was filed on February 11, 2005. A Supplemental Appeal Brief was filed with the 1<sup>st</sup> Request for Reinstatement of the Appeal.
11. An Office Action dated March 7, 2005, while maintaining the final rejection of claims 22-27, again reopened the prosecution of the case.
12. A 2<sup>nd</sup> Request for Reinstatement of the Appeal was filed on March 22, 2005. A 2<sup>nd</sup> Supplemental Appeal Brief was filed with the 2<sup>nd</sup> Request for Reinstatement of the Appeal.
13. An Office Action dated May 24, 2006 reopened the prosecution of the case by rejecting the previously allowed claims 1-6 while maintaining the rejection of claims 22-27.
14. A 3<sup>rd</sup> Request for Reinstatement of the Appeal, along with another Appeal Brief, was filed on September 13, 2006.
15. The latest Office Action dated December 28, 2006 once again reopened the prosecution of the case by citing yet another new reference, which, to the applicant at least, does not appear to be any more relevant than those references that were cited in the previous Office Actions. Claims 1-6 have once again been allowed.

16. Thus, starting from April 20, 2004, this case has been appealed five times (the original Appeal, the three Requests for Reinstatement of the Appeal, and the instant Request for Reinstatement of the Appeal). The being appealed claims have not been amended since before the original Appeal.
17. As understood, the policy of the U.S. PTO is not to prolong prosecution of applications. This is evidenced by the proposed changes to practice for continuation applications and RCEs promulgated by the PTO on January 3, 2006 (Federal Register: Vol. 71, No. 1).
18. Here we have a case that was filed prior to the effective date of term extension (April 14, 2000) and has been on appeal since April 2004. Yet the examiner (and his predecessor) has thus far refused to forward the case to the Board of Appeals by repeatedly re-opening the prosecution of this case. It thus appears that the prosecution of this case has unnecessarily been prolonged by the examiner, while the term of any potential patent to issue from the being appealed application is continuously being reduced.

In view of the foregoing, the Director is respectfully requested to exercise his supervisory authority to order the examiner to either allow the claims on appeal or forward this application to the Board of Appeals for adjudicating the merits of the claims on appeal, for if after such lengthy prosecution, the examiner has yet to find prior art that he believes will sustain his rejection before the Board of Appeals, then he should allow this case.

Respectfully submitted,



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Date: March 15, 2007